

1 BOIES, SCHILLER & FLEXNER LLP
2 RICHARD J. POCKER (NV Bar No. 3568)
3 300 South Fourth Street, Suite 800
4 Las Vegas, NV 89101
5 Telephone: (702) 382-7300
6 Facsimile: (702) 382-2755
7 rpocker@bsfllp.com

8 BOIES, SCHILLER & FLEXNER LLP
9 WILLIAM ISAACSON (*pro hac vice*)
10 KAREN DUNN (*pro hac vice*)
11 5301 Wisconsin Ave, NW
12 Washington, DC 20015
13 Telephone: (202) 237-2727
14 Facsimile: (202) 237-6131
15 wisaacson@bsfllp.com
kdunn@bsfllp.com

16 BOIES, SCHILLER & FLEXNER LLP
17 STEVEN C. HOLTZMAN (*pro hac vice*)
18 KIERAN P. RINGGENBERG (*pro hac vice*)
19 1999 Harrison Street, Suite 900
20 Oakland, CA 94612
21 Telephone: (510) 874-1000
22 Facsimile: (510) 874-1460
23 sholtzman@bsfllp.com
24 fnorton@bsfllp.com
25 kringgenberg@bsfllp.com

26 Attorneys for Plaintiffs
27 Oracle USA, Inc., Oracle America, Inc., and
28 Oracle International Corp.

18 UNITED STATES DISTRICT COURT

19 DISTRICT OF NEVADA

20 ORACLE USA, INC., a Colorado corporation;
21 ORACLE AMERICA, INC., a Delaware
22 corporation; and ORACLE INTERNATIONAL
23 CORPORATION, a California corporation,

24 Plaintiffs,

25 v.

26 RIMINI STREET, INC., a Nevada corporation;
27 AND SETH RAVIN, an individual,

28 Defendants.

MORGAN, LEWIS & BOCKIUS LLP
THOMAS S. HIXSON (*pro hac vice*)
KRISTEN A. PALUMBO (*pro hac vice*)
One Market, Spear Street Tower
San Francisco, CA 94105
Telephone: 415.442.1000
Facsimile: 415.442.1001
thomas.hixson@morganlewis.com
kristen.palumbo@morganlewis.com

DORIAN DALEY (*pro hac vice*)
DEBORAH K. MILLER (*pro hac vice*)
JAMES C. MAROULIS (*pro hac vice*)
ORACLE CORPORATION
500 Oracle Parkway, M/S 5op7
Redwood City, CA 94070
Telephone: 650.506.4846
Facsimile: 650.506.7114
dorian.daley@oracle.com
deborah.miller@oracle.com
jim.maroulis@oracle.com

Case No. 2:10-cv-0106-LRH-PAL

**ORACLE'S [PROPOSED] LIMITING
INSTRUCTION**

[PROPOSED] LIMITING INSTRUCTION

1 At trial on September 14, 2015, the Court requested that the parties submit a proposed
 2 limiting instruction concerning hypothetical questions asked during the depositions of Rimini
 3 customers about whether the customers would have been willing to contract for support with
 4 Rimini if they had known certain facts about Rimini's service. The parties have met and
 5 conferred and were unable to agree on a proposed limiting instruction. Rimini's proposed
 6 instruction was several paragraphs long and heavily argumentative, designed to imply judicial
 7 skepticism of the witness's testimony, rather than a short, neutral limiting instruction.
 8 Accordingly, Plaintiffs Oracle USA, Inc., Oracle America, Inc., and Oracle International
 9 Corporation propose the following instruction:

10 “You have just heard testimony about whether a Rimini customer would have been
 11 willing to contract for services with Rimini if that customer had known certain information about
 12 Rimini's services or conduct. You should not assume from the question that the referenced
 13 information about Rimini's services or conduct was true or not true; that is for you to decide.”

14

15 Authority: *See* 9/14/2014 Trial Tr. at 124:12-126:2 (rough) (“And needless to say if at the end
 16 of the case the evidence turns out not to have supported at all a reasonable inference that would
 17 have allowed the question -- the nature of the questions being asked, the Court would consider a
 18 motion to strike at that time . . . the question also assumes certain conclusions. And I think the
 19 limiting nature of the instruction should be directed at that as well.”); *United States v. Cuti*, 720
 20 F.3d 453, 459-60 (2d Cir. 2013) (“a witness may testify to the fact of what he did not know and
 21 how, if he had known that independently established fact, it would have affected his conduct or
 22 behavior”; “When the issue for the fact-finder’s determination is reduced to impact—whether a
 23 witness would have acted differently if he had been aware of additional information—the
 24 witness so testifying is engaged in ‘a process of reasoning familiar in everyday life.’”) (quoting
 25 Fed. R. Evid. 701 advisory committee’s note, 2000 amend.), *cert. denied*, 135 S. Ct. 402, 190 L.
 26 Ed. 2d 289 (2014), and *cert. denied sub nom. Tennant v. United States*, 135 S. Ct. 402 (2014),
 27 and *cert. denied*, 135 S. Ct. 402, 190 L. Ed. 2d 289 (2014), and *cert. denied sub nom. Tennant v.*
 28 *United States*, 135 S. Ct. 402 (2014).

1 DATED: September 15, 2015
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3 Morgan, Lewis & Bockius LLP
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5 By: /s/ Thomas Hixson
6 Attorneys for Plaintiffs
7 Oracle USA, Inc., Oracle America, Inc.
and Oracle International Corp.
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